

MICHAEL GRENINGER

IBLA 89-421

Decided July 3, 1991

Appeal from a decision of the California State Office, Bureau of Land Management, denying petition for deferment of annual assessment work for lode mining claims CA MC 56303 through CA MC 56305.

Affirmed.

1. Mining Claims: Generally--Mining Claims: Assessment Work

When a mining claimant failed to show that the United States Forest Service denied him access to perform annual assessment work, his petition for deferment was properly denied. To be entitled to a deferment from the requirement to perform annual assessment work on mining claims, he was required to show that a legal impediment prevented performance of the work by denying access to the claims. 30 U.S.C. § 28(b) (1988).

APPEARANCES: Michael Greninger, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Michael Greninger has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated April 3, 1989, denying his petition for deferment of annual assessment work for the Rox #1, Rox #2, and Rox #1A lode mining claims, CA MC 56303 through CA MC 56305. Notices of location for these claims were filed with BLM on October 19, 1979.

The claims are situated in sec. 21, T. 39 N., R. 12 W., Siskiyou County, California, within the Klamath National Forest.

By letter dated August 30, 1988, Greninger wrote, pertinently, to the United States Forest Service (FS), concerning access to his claims: "Subject: locks, gates, etc. on my mining claims. (1) Rox 1-2-1A \* \* \* gate locked denying my access - road originally put in by us. \* \* \* Please advise as soon as possible to correct these problems as time is of the essence." On December 23, 1988, Greninger filed a petition for a 1-year deferment of annual assessment work in which he stated that "right-of-way was denied by the U.S. Forest Service, thereby making it impossible for me and my employees to perform my annual assessment work." On December 28, 1988, BLM issued a decision requesting additional information, to include a letter from FS stating that it had denied him access to the three mining

claims. Greninger submitted a revised petition on February 24, 1989, requesting deferment of assessment work from August 28, 1988, through August 27, 1989. In this petition Greninger stated that the "U.S. Forest Service had denied my access with a locked gate across mine access road & have been duly notified & have not responded at this time." Greninger did not, however, submit a letter from FS stating that access to the claims had been denied him.

A memorandum in the case file of a telephone conversation with FS employee Griffith dated March 31, 1989, concerning Greninger's request for deferment, records that:

Mr. Griffith stated that Mr. Greninger informed [FS] about the lock on the gate but it was expressed in a general manner and he did not indicate that he needed to gain access to do assessment work and road was closed to the general public due to conditions of the land caused by forest fires. Mr. Griffith said that Mr. Greninger was not denied access and could have obtained a key to the gate and would have been allowed access for assessment work.

This conversation was confirmed in a letter dated April 6, 1989, to BLM from FS District Ranger Michael Lee, that explained, pertinently:

Our policy is to provide a mechanism of entrance to claimants who need to access their claims and mining operations. This is done by allowing them to place their own lock on one end of the gate or by linking into our locking system or by checking out a Forest Service key to access our lock each time they enter on an infrequent basis. Our only restrictions are that they keep the gate locked behind them, they do not lock the gate in a way that would restrict Forest Service access and that if they wish to access the area in wet weather the road must presently have or they must place an all weather surface.

Mr. Greninger expressed a concern regarding the closure last summer. Earl Griffith of my staff explained our policy as stated above regarding accessing mining claims behind closures to Mr. Greninger at that time. Mr. Griffith stated to Mr. Greninger that the Forest Service would cooperate by allowing him access to his claims. He was asked to notify the Forest Service when he needed [to go] behind the gate and at that time to provide his personal lock. We would then incorporate his lock in the mechanism so he could access his claim. Mr. Greninger was never informed that we would deny him access to his mining claim.

Id. at 1, 2.

The BLM decision denying deferment found that "Greninger could have obtained \* \* \* access to the subject mining claims to perform assessment

work. Deferments may not be granted for reasons such as temporary closure of roads leading to mining claims" (Decision at 1). 1/

In his statement of reasons Greninger argues that the mining area was closed to entry by FS without notification to claim owners. He asserts that a "metal locked gate was erected across the access road, put in by the claim owners," that denied them entry. Greninger asserts that FS was notified of this circumstance "in person and in writing" but that he received no official response, although time limitations on assessment work gave urgency to his need to use the road in order to reach his claims. Finally, he asserts that this matter involves a "conflict of interest," because "the Forest Service admits to closing the area but did not contact me or offer me a key when advised of the problem."

[1] Deferment of annual assessment work may be ordered by the Secretary

upon submission \* \* \* of evidence \* \* \* that such \* \* \* group of claims is surrounded by lands over which a right-of-way for the performance of such assessment work has been denied or is in litigation or is in the process of acquisition under State law or that other legal impediments exist which affect the right of the claimant to enter upon \* \* \* such \* \* \* group of claims.

30 U.S.C. § 28(b) (1988); see also 43 CFR 3852.1.

The purpose of the statute is to protect a claimant whose legal right of access to his mining claim has been denied. John W. MacGuire, 35 IBLA 117, 118 (1978). To be entitled to a deferment, a petitioner must show that one of the impediments to access listed in 30 U.S.C. § 28(b) (1988) prevents access to the claims so as to prevent performance of assessment

1/ The decision also recited that there is no evidence that a proof of labor or notice of intention to hold the mining claims was filed for the 1988 "work year" and that a decision declaring the claims abandoned and void would be issued in the near future. Presumably BLM is referring to section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1988), which requires the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to Dec. 31 of each year following the year in which the claim is located. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1988); 43 CFR 3833.4. The assessment year is established by 30 U.S.C. § 28 (1988) and runs from Sept. 1 to Sept. 1 of the following year. The "year" for filing copies of affidavits of assessment work with BLM is set by 43 U.S.C. § 1744 (1988) and runs from Jan. 1 through Dec. 30.

work. Sunrise Mining & Exploration Co., 117 IBLA 377, 379 (1991); Wheaton D. Blanchard, 112 IBLA 261, 265 (1990). In cases such as this one, a deferment may be granted if "legal impediments" affect the right of access to claims and "physical access to the claims has been precluded." David Doremus, 115 IBLA 336, 339 (1990).

Greninger has not shown that he was denied access to the mining claims to perform assessment work. In fact, the information supplied by FS, considered together with the statements supplied by Greninger, establishes that FS was willing to provide a means for Greninger to get to his claims using the improved road to perform his assessment work, had he asked to use the road. That this is so is also indicated by his argument characterized as "conflict of interest," which suggests that it was the responsibility of FS to volunteer assistance in order to guarantee timely performance of assessment work on these three claims. Greninger's letter of August 30, 1988, to FS does not request access to the claims for the purpose of performing assessment work, nor does he allege that he ever asked for a key to the gate. Before a claimant can complain that access has been denied, he must make an attempt to gain access. See Wheaton D. Blanchard, *supra* at 264. There is no indication that he did so. As was also the case in Sunrise Mining & Exploration Co., *supra*, there is no showing here that the locked gate actually denied Greninger needed access to perform assessment work. Contrary to the implication in his statement of reasons for appeal, the burden to show his legal access to his mines was curtailed so as to prevent performance of assessment work rested with Greninger. *Id.* We find that no "legal impediment" has been shown to affect the right to enter his claims within the meaning of 30 U.S.C. § 28(b) (1988) so as to entitle him to deferment of assessment work. 2/

2/ This case must be distinguished from American Resources, Ltd., 44 IBLA 220 (1979), a case that reversed a BLM decision denying a petition for deferment. There, the Board found that when the National Park Service (NPS) barricaded claimant's access and threatened criminal prosecution to bar entry, such action was a "legal impediment" affecting the claimant's right to enter the surface of the claims. The Board referred to a statement by the Superintendent of the Joshua Tree National Park that he had informed the claimant that it was "not permitted to do annual assessment work within the boundaries of Joshua Tree," owing to BLM's decision to declare its claims null and void. The Board held that it was improper for NPS to bar claimant access to its claims in reliance on BLM's decision declaring the claims null and void, because under 43 CFR 4.21(a) the effect of this decision was suspended upon timely filing of a notice of appeal. *Id.* at 227. We note that in the present case there has been no admission by FS that it denied Greninger access to perform assessment work. In American Resources, Ltd., there was such an admission by NPS. Nor was the legal effect of a prior BLM decision concerning the claims an issue here, despite the possibility that future action to void the claims might be taken. See note 1, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

Franklin D. Arness  
Administrative Judge

I concur:

---

David L. Hughes  
Administrative Judge